

Docket No.: 04995/128001
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Toshiaki Irie

Application No.: 10/705,336

Confirmation No.: 5133

Filed: November 10, 2003

Art Unit: 2621

For: COMPOSITE AUDIO-VIDEO APPARATUS

Examiner: C.G. Findley

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

Pursuant to 37 CFR § 41.37, please consider the following Appellant's Brief in the referenced application currently before the Board of Patent Appeals and Interferences ("the Board"). As required under § 41.37(a), this brief is filed more than two months after the Notice of Appeal and Pre-Appeal Brief and Request for Review filed in this case on June 23, 2008, and is in furtherance of said Notice of Appeal and Pre-Appeal Brief.

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I. REAL PARTY IN INTEREST

The real party in interest for this appeal is Funai Electric Co., LTD. An Assignment transferring all interest in the referenced application from the inventor to Funai Electric Co., LTD. was recorded by the USPTO on November 10, 2003. The Assignment is recorded at Reel 014693, Frame 0905.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 4 claims pending in application.

B. Current Status of Claims

1. Claims pending: 1-4

2. Claims rejected: 1-4

C. Claims On Appeal

The claims on appeal are claims 1-4.

IV. STATUS OF AMENDMENTS

Applicant did not file an Amendment After Final Rejection. Thus, all of the amendments have been entered and considered by the Examiner. The pending claims of record are presented in the Claims Appendix. The claims in the Claims Appendix include the amendments filed by the Applicant on November 5, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following discussion summarizes the content of the claimed subject matter. The references to the Figures and Specification (*i.e.*, the Publication of the present Specification, US Publication No. 2004/0114905) referenced below should not be construed as the only locations in the specification which support or discuss the respective limitation.

Independent claim 1 is directed to a composite audio-video apparatus. *See* Publication of present application, Abstract and Figure 1. The composite audio-video apparatus includes a first and second image reproduce sections for reproducing images respectively recorded in different mediums. *See* Publication of present application, Figure 1, reference numbers 2 and 3. Each of the image reproduce sections includes first and second control sections for respectively controlling the first and the second image reproduce section. *See* Publication of present application, Figure 1, reference numbers 21 and 31. The composite audio-video apparatus also includes an operation command informing section that includes a remote operating section for informing the first and the second control section of an inputted operation command. *See* Publication of present application, Figure 1, reference numbers 4 and 5. An image output section selectively outputs an image reproduced by the first or the second image reproduce section. *See* Publication of present application, Figure 1, reference number 6. In the composite audio-video apparatus, the first control section includes a changeover control section for controlling to change over an image input source of the image output section. *See* Publication of present application, Figure 1, portion labeled “image changeover signal” and paragraph [0027]. Further, the second control section outputs a direction signal to the first control section only when the operating command inputted from the operation command informing section is a specific operation command which has been previously set for the second image reproduce section. *See* Publication of present application, Figure 1, portion labeled “direction signal” and

reference numbers 21 and 31, and paragraphs [0018]-[0019] and [0030]. In the composite audio-video apparatus, the first control section changes over the image output section so that an image reproduced by the second image reproduce section is outputted in the case where the first control section receives the direction signal even when the image output section is set to output an image reproduced by the first image reproduce section. *See* Publication of present application, Figure 1 and paragraph [0027]. The first control section changes over the image output section so that the image reproduced by the first image reproduce section is outputted in the case where the operation command inputted from the operation command informing section is a specific operation command which has been previously set for the first image reproduce section. *See* Publication of present application, paragraphs [0025]-[0027].

Independent claim 2 is directed to a composite audio-video apparatus. *See* Publication of present application, Abstract and Figure 1. The composite audio-video apparatus includes a first and second image reproduce sections for reproducing images respectively recorded in different mediums. *See* Publication of present application, Figure 1, reference numbers 2 and 3. Each of the image reproduce sections include first and second control sections for respectively controlling the first and the second image reproduce section. The composite audio-video apparatus also includes an operation command informing section for informing the first and the second control sections of an inputted operation command. *See* Publication of present application, paragraph [0025] and Figure 1, reference numbers 4 and 5. An image output section selectively outputs an image reproduced by the first or the second image reproduce section. *See* Publication of present application, Figure 1, reference number 6. The first control section includes a changeover control section for controlling to change over an image input source of the image output section. *See* Publication of present application, Figure 1, portion labeled “image changeover signal” and paragraph [0027]. Further, the second control section outputs a direction

signal to the first control section when the operating command inputted from the operation command informing section is an operation command for the second image reproduce section. *See* Publication of present application, Figure 1, portion labeled “direction signal” and reference numbers 21 and 31, and paragraphs [0018]-[0019] and [0030]. In the composite audio-video apparatus, the first control section changes over the image output section so that an image reproduced by the second image reproduce section is outputted in the case where the first control section receives the direction signal even when the image output section is set to output an image reproduced by the first image reproduce section. *See* Publication of present application, Figure 1 and paragraph [0027]. In addition, the first control section changes over the image output section so that the image reproduced by the first image reproduce section is outputted in the case where the operation command inputted from the operation command informing section is an operation command for the first image reproduce section. *See* Publication of present application, Figure 1 and paragraph [0027].

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The present Appeal addresses the following grounds of rejection:

Whether claims 1-4 are patentable under 35 U.S.C. § 102(a) over U.S. Patent No. 6,400,280 (“Osakabe”).

VII. ARGUMENT

In this Appeal, Appellants argue that claims 1-4 are patentable under 35 U.S.C. 102(a) as over Osakabe. For purposes of this Appeal, claims 1-4 stand or fall together. Independent claim 1 is representative of the group including claims 1-4.

On appeal to this Board, Appellants must show that the Examiner erred in finally rejecting the claims. Appellants assert that the Examiner has not met the legal standard for establishing anticipation for at least the reasons described below.

Under 35 U.S.C. § 102, “[a] claim is anticipated only if *each and every element* as set forth in the claims is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) (emphasis added). Further, “[t]he identical invention must be shown in as complete detail as is contained in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

A. The Examiner erroneously interprets the limitation reciting “changeover control section” in the claims

Applicant respectfully asserts that the Examiner erroneously interprets “wherein the first control section includes a changeover control section for controlling to change over an image input source of the image output section,” as recited in independent claims 1 and 2.

In one or more embodiments of the present invention, when an operation command to the first image reproduce section is input from the operation section into the first control section that is capable of changing over the image output section, the first control section changes over the image that is input to the image output section so that an image from the other of the first or second image reproduce section is output, depending on which one of the first or second image reproduce section is specified by the operation command (*see, e.g.*, paragraph [0016] of published application).

For example, the VCR control section 21 corresponds to a first control section of the present invention, and the videocassette record and reproduce section 22 corresponds to a first

image reproduce section (*see, e.g.*, Fig. 1 and paragraph [0025]). When a user operates the remote controller 5 and inputs an operation command via the remote control receiving section 4, the operation command controls the videocassette record and reproduce section 22 such that image reproducing and recording can be conducted. The VCR control section 21 is configured to change over the image output by the image output section 6, *i.e.*, by changing the image inputting source of the image output section 6 between one of the videocassette record and reproduce section 22 and the DVD reproduce section 32 (*see, e.g.*, paragraph [0027] and Figure 1 of published application).

The Examiner alleges that Osakabe discloses the abovementioned changeover control section of the first control section, as required by claims 1 and 2. Applicant respectfully disagrees. In Osakabe, the key input portion 32 is operated by a user, and a character array corresponding to an input control command and a remote control signal corresponding to a control command from the bi-directional remote commander 27 are deciphered in the CPU 33. The deciphered control command is used to display a corresponding character, figure, icon or the like in accordance with the content thereof on the display 34, whereby the user can check the indicated control command. If the digital camcorder 25 is the destination to transmit a reproducing control command, the CPU 33 converts the control command to the data format of the asynchronous packet of the IEEE-1394 serial bus 26 to indicate the address of the camcorder 25 to Destination_ID (*see, e.g.*, col. 6, line 57 through col. 7, line 12, and Figs. 3 and 5 of Osakabe).

The Examiner regards the triggering of the response of the camcorder 25 that transmits a response to the control command as an asynchronous packet of the IEEE-1394 serial bus to the digital TV 21 in Osakabe as being equivalent to a changeover control section, as recited in

claims 1 and 2 of the present application. The response of the camcorder 25, returned through the serial bus 26, is later converted to a digital signal stream and supplied to the CPU 33, which, if necessary, supplies the remote control signal to the display 34 to display corresponding characters, figures, icons, etc., whereby a user can recognize whether the camcorder 25 normally receives the control command (*see, e.g., col. 7, lines 13-27 of Osakabe*).

Now, assuming that any one of the local circuitries of the DVCR 23 and DVD 24 in Fig. 3 of Osakabe constitute the first control section, and the DVCR 23 and DVD 24 themselves constitute the first and second image reproduce sections, as alleged by the Examiner, *no change in the image input source* of the alleged image output section, *i.e., digital TV 21*, is disclosed via a control by a changeover control section that is part of a first control section of Osakabe. Even if the camcorder 25 is assumed as the first control section, Osakabe clearly does not disclose controlling a change over in an image input source of the digital TV 21, as required by claims 1 and 2. The Destination_ID merely receives *the conversion of the control command* by the CPU 33 to an appropriate data format to indicate the address of the camcorder 25. Further, the camcorder 25, when triggered, merely transmits a response to the control command to the digital TV 21, as discussed above.

In view of the above, Osakabe does not show or suggest “wherein the first control section includes a changeover control section for controlling to change over an image input source of the image output section,” as required by claims 1 and 2. Consequently, claims 1 and 2 are not anticipated by Osakabe. Dependent claims 3 and 4 are also not anticipated for at least the same reasons.

B. The Examiner erroneously interprets the “first and second control section” portion of the claims

The Examiner relates the DVCR 23 and DVD 24 in Fig. 3 of Osakabe and their own local circuitries to the first and second control sections, as recited in independent claims 1 and 2. However, as discussed above, Osakabe merely discloses the deciphering of the remote control signal corresponding to a control command at the CPU 33. The deciphered control command is supplied to the display 34 to display the corresponding image (*see* col. 6, lines 57-67 of Osakabe). This implies that control of images, *i.e.*, changing images, is based on a signal from the CPU 33 and *not via the local circuitries of the DVCR 23 and the DVD 24 that the Examiner considers as the first and second control sections*, as required by claims 1 and 2.

Specifically, “[U]nless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed, and, thus, cannot anticipate under 35 U.S.C. § 102.” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 2008 WL 4614511 (Fed. Cir. 2008). Accordingly, even if the Examiner has identified first and second control sections in Osakabe, Osakabe is silent regarding the function of the first and second control sections, which includes that the first control section includes a change over control section and that the first control section changes over the image output by the image output section. Accordingly, in view of *Net MoneyIN*, Osakabe fails to anticipate each and every limitation of the independent claims.

Consequently, in view of the Examiner’s inconsistent interpretation of the claimed components, and further in view of *Net MoneyIN*, claims 1 and 2 are not anticipated by Osakabe


for the additional reason described above. Dependent claims 3 and 4 are not anticipated for at least the same reasons.

C. Summary

In view of the above, the Examiner has failed to meet the requirements of MPEP § 2131. Thus, the Examiner's contentions do not support the rejection of claims 1-4. Accordingly, favorable consideration of the present application is respectfully requested.

Dated: December 15, 2008

Respectfully submitted,

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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 10/705,336

1. A composite audio-video apparatus comprising:

first and second image reproduce sections for reproducing images respectively recorded in different mediums;

first and second control sections for respectively controlling the first and the second image reproduce section; an operation command informing section, including a remote operating section, for informing the first and the second control section of an inputted operation command; and

an image output section for selectively outputting an image reproduced by the first or the second image reproduce section;

wherein the first control section includes a changeover control section for controlling to change over an image input source of the image output section;

the second control section outputs a direction signal to the first control section only when the operating command inputted from the operation command informing section is a specific operation command which has been previously set for the second image reproduce section; and

the first control section changes over the image output section so that an image reproduced by the second image reproduce section is outputted in the case where the first control section receives the direction signal even when the image output section is set to output an image reproduced by the first image reproduce section, and the first control section changes over the image output section so that the image reproduced by the first image reproduce section is outputted in the case where the operation command inputted from the operation command informing section is a specific operation command which has been previously set for the first image reproduce section.

2. A composite audio-video apparatus comprising:

first and second image reproduce sections for reproducing images respectively recorded in different mediums;

- first and second control sections for respectively controlling the first and the second image reproduce sections;
- an operation command informing section for informing the first and the second control sections of an inputted operation command; and
- an image output section for selectively outputting an image reproduced by the first or the second image reproduce section;
- wherein the first control section includes a changeover control section for controlling to change over an image input source of the image output section;
- the second control section outputs a direction signal to the first control section when the operating command inputted from the operation command informing section is an operation command for the second image reproduce section; and
- the first control section changes over the image output section so that an image reproduced by the second image reproduce section is outputted in the case where the first control section receives the direction signal even when the image output section is set to output an image reproduced by the first image reproduce section, and the first control section changes over the image output section so that the image reproduced by the first image reproduce section is outputted in the case where the operation command inputted from the operation command informing section is an operation command for the first image reproduce section.
3. The composite audio-video apparatus according to claim 2, wherein the first control section includes a discrimination section for discriminating whether or not the operation command is a specific operation command which has been previously set for the first image reproduce section when the operation command for the first image reproduce section is inputted to the first control section; and only when the operation command is the specific operation command for the first image reproduce section, the first control section changes over the image output section so that an image from the first image reproduce section is outputted.

4. The composite audio-video apparatus according to claim 2, wherein the second control section includes a discrimination section for discriminating whether or not the operation command is a specific operation command which has been previously set for the second image reproduce section when the operation command for the second image reproduce section is inputted to the second control section; and only when the operation command is the specific operation command for the second image reproduce section, the direction command is outputted to the first control section.

APPENDIX B

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

APPENDIX C

No related proceedings are referenced in II. above, hence copies of decisions in related proceedings are not provided.